STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: February 19, 2004

ITEM 5 -- Approval of a Financial Assurance Amount for the Garcia Sand and Gravel Site (Garcia Sand and Gravel, Operator), California Mine ID # 91-58-0023, Yuba County

BACKGROUND: The Surface Mining and Reclamation Act (SMARA, Public Resources Code Section 2710 et seq.) requires that each surface mining operation maintain a financial assurance in an amount adequate to reclaim, in accordance with the requirements of an approved reclamation plan, the land affected by the mining operation at the conclusion of mining activities. SMARA lead agencies are required annually to review the financial assurance amount for each surface mining operation, and adjust the amount as necessary to account for new land disturbed, inflation, or land reclaimed. In any event, the lead agency must ensure that the approved amount is adequate to reclaim the mine site according to the reclamation plan requirements. (PRC §2770, 2773.1; CCR §3804)

At the SMGB's February 13, 2003 meeting, the SMGB accepted the findings of the site inspection conducted on December 19, 2002, pursuant to PRC §2774, and requested the operator to provide a revised financial assurance cost estimate (FAE) by May 16, 2003. On May 16, 2003, the operator, Garcia Sand and Gravel, submitted a financial assurance cost estimate in the amount of $15,312.

This cost estimate was reviewed by the Department of Conservation's Office of Mine Reclamation, and the results presented to the operator and to the SMGB's Surface Mining Standards Committee at its September 11, 2003 meeting. The OMR noted serious deficiencies in the scope, clarity, and detail of the existing reclamation plan, in that it did not meet then existing SMARA standards at the time it was approved (2001). OMR, based on its estimate of the average cost per acre to reclaim a mine site in the vicinity, suggested a minimum financial assurance amount of $105,000 (21 acres disturbed x $5,000 per acre).

The SMGB office notified the operator by letter of September 16, 2003, of the Committee's conclusion that the operator must re-submit a revised financial assurance cost estimate that addressed several critical issues raised by the OMR. The operator was provided until the close of business on October 10, 2003, to respond with a revised estimate. The operator responded by letter of October 10, 2003 (received at SMGB office on October 15th) that contained a one-line revised cost estimate: "$5,000.00 per acre x 21 acres = $105,000", and referenced OMR's suggested minimum amount.

The operator was informed by a letter from the SMGB office on October 16, 2003, that the response for a revised calculation was not acceptable in that the calculated amount was not adequately supported by information specific to the conditions at the mine site or contained in the approved reclamation plan. The response form did not allow for a review of the various elements supporting the calculation.

DISCUSSION: At the SMGB's November 20, 2003, regular business meeting, Garcia Sand and Gravel (Operator) provided comments and supporting documentation that the costs to revegetate the mine site should not be included in the Financial Assurance Cost Estimate (FAE). The basis for the Operator's position is that the approved Reclamation Plan, RP #00-01(a), specifically omits revegetation activities because the final design of the site (i.e. at the completion of mining activities) will be an active river bar, subject to potential annual flooding by the Yuba River which would destroy any vegetation.

The SMGB staff agrees with the basic comments of the Operator, with regard to the fact that placing soils and vegetation atop an active river bar would not be practical and constructive, especially if the area of the river bar were eroding. Nevertheless, revegetating an active river bar is not what is proposed or contained in the FAE's described later in this Report, nor are the reclamation activities in the Reclamation Plan being challenged. What is described in the FAE's are the estimated reclamation costs to stabilize and remove hazards to humans and the river environment, and establish conditions suitable for an alternate use if the mine site does not reach its final design configuration and must be reclaimed (possibly to another end use) from its current condition.

Financial Assurances are required to provide immediate access by a lead agency and the State to funds for the reclamation of a mine site if the operator is not capable, or is unwilling, to reclaim lands disturbed by the mining activities. The amount of financial assurance in place every year is considerably dependent on both the amount of affected acreage remaining unreclaimed, and the proximity to achieving a completed design configuration for the mine site as proposed in the approved reclamation plan. This is one reason why financial assurances are recalculated each year and adjusted accordingly.

In the case of the Garcia Sand and Gravel mine, the final design configuration for the mine site essentially is to be a flat river bar that is inundated by high water levels on the Yuba River. According to the Operator's argument, these are eroding high waters rather than depositional high waters and it is, therefore, not practical to undertake an active revegetation program. However, the site's current configuration is not of a flat-surfaced river bar subject to flooding, but rather a very large sand and gravel bar containing in excess of 4.8 million tons of material[1].

[1] Reclamation Plan: Approximately 120,000 tons mined per year x 40 years.

Substantial portions of the current bar are 30 feet or more above the average river level.[2] According to the Reclamation Plan, Page 3, Section 4.1, a 5 feet high berm is all that is necessary to prevent the Yuba River from flooding the mining area behind the berm and allow mining activities to continue[3]. Therefore, the FAE's shown later in this Report employ a revegetation program and a grading program intended to prevent erosion of the remaining site, as well as blend the site with the surrounding topography and natural conditions (PRC §2712(b)(c); 14CCR §3704). The areas affected by the proposed FAE constitute 21 acres out of a possible 40-acre site which are above any effects of the Yuba River, and on which the Operator currently is conducting surface mining activities.

FURTHER DISCUSSION: If a mine operator were to terminate a surface mining operation before reaching the site's final design configuration as described in the reclamation plan, then there are three courses of action that may be considered by the lead agency in determining an adequate financial assurance amount:

Option 1: Since a reclamation plan is a contract between the lead agency and the mine operator, the lead agency may consider, in very special circumstances, that enough financial assurance be posted to finish the mining operation to achieve the approved final design configuration so that the site may be reclaimed to a condition readily adaptable to an alternate use approved in the reclamation plan. In the vast majority of instances this is impractical when years of work remain to be done on the mine site, in that it could result in exceptionally high financial assurance amounts and a potentially lengthy period of time elapsing before the final design configuration was achieved. It may, also, force an operator to mine in an unprofitable business setting, which may be the very reason the original operations were terminated. It should be noted, however, that 14CCR §3804(a)(1) provides that a financial assurance calculation should be based on, "an analysis of the physical activities and materials necessary to implement the approved reclamation plan;...". Therefore, there is a basis for requiring a financial assurance amount necessary to reclaim the site according to the approved reclamation plan criteria. Use of Option 1 occurs only when a mine site is very close to reaching the approved final design configuration, and it is not practical to reclaim the site to another design.

Option 2: If a mine has not reached its final design configuration as described in the approved reclamation plan, and the approved plan is not reflective of the current site's reclamation needs, it may be necessary and desirable to amend the existing reclamation plan in consideration of the current configuration before undertaking new reclamation activities. Depending on the scope of the amendments, this may result in a substantial deviation from the existing approved plan, and require an environmental review under the California Environmental Quality Act (CEQA).

[2] Reclamation Plan topographic maps; Site photographs from 2002 and 2003 inspection reports.

[3] Reclamation Plan: "The initial phases of mining will leave a portion of the training wall structure approximately 15 feet wide at the base with a height of 5 feet, which will segregate the mining areas from the Yuba River.....[T]he purpose of leaving a portion of the training wall structure until the completion of mining is to protect the mining area from the direct flow of the Yuba River during flood conditions..... (emphasis added).

These processes can be expensive and time consuming; however, in some situations it is the most practical approach for both the operator and the lead agency when another mutually desirable end use for the land is achievable, and results in a realistic financial assurance cost estimate.

Option 3: Annually, the lead agency is required under SMARA to review and adjust as necessary the financial assurance amount required to reclaim the mine site, "[in] accordance with Public Resources Code section 2773.1 to ensure that the reclamation is performed in accordance with the approved reclamation plan and with this article [Article 9]" (14CCR §3702). It is apparent that, in cases of early termination (or abandonment) of mining operations, it may not be practical or even possible to completely satisfy all the requirements of both the "approved reclamation plan" because the site does not resemble the expected design conditions described in the approve plan, let alone meet the Legislative intent of the Act stated in PRC §2712. One possible solution to prevent conflict is to require the financial assurance amount to include as many elements of the formally approved reclamation plan as can be applied to the site, as well as elements of Article 9 necessary to meet the requirements of SMARA to stabilize the unfinished site, prevent residual hazards to humans and the natural environment, and achieve a landscape readily adaptable for an alternate (and different from the existing reclamation plan) use.

In almost all cases, Option 3 is what is done by a lead agency when a new financial assurance is reviewed and/or approved each year. The approval by the lead agency of the work necessary to accomplish a stabilized, adaptable, and useable landscape, and the amount of funds necessary to achieve a new end use, may be considered tantamount to an interim agreement between the mine operator and the lead agency that in the event of an unscheduled termination of mining operations, a mutually acceptable set of reclamation actions will be taken as described in the details of the financial assurance calculations.

In fact, the methodology described under Option 3 is that which has been applied to the FAE's for the Garcia Sand and Gravel mine. In the event of an unscheduled termination of mining operations, a proposed set of reclamation actions can be taken to meet the requirements of the existing approved reclamation plan, those of Article 9, and the intent of PRC §2712. If one of the alternate reclamation activities (in this case, revegetation) is not a part of the existing reclamation plan, it is still proposed (Calculations I and IV) as necessary to comply with Article 9 and PRC §2712. It must be recognized that early termination of a mining operation results in not achieving the proposed ultimate design configuration for the site – a result that is not a part of the existing and agreed upon reclamation plan. Financial assurances are to protect the general public when the reclamation plan agreement is not fulfilled by the operator.

Four Financial Assurance Cost Calculations are presented following: Calculation I incorporates a revegetation program to stabilize and match the surrounding topography and countryside over 21 acres that are substantially above a flood line, and includes the importation of soil.

Calculation II omits the employment of a revegetation program and the importation of soil. Calculation III includes the spreading of tailings over the 21 acre site, but no revegetation activities. Calculation IV includes the spreading of mine tailings to a depth of 6 inches over the 21 affected acres and hydroseeding. This calculation assumes that the requisite mine tailings are available on the site, and do not require importation.

CALCULATION (I) – [Includes revegetation program]: The financial assurance amount as calculated is $731,149. This cost estimate is based on stabilizing the site, eliminating residual hazards, and preparing the site for an alternate use from its current condition; included is a revegetation program.

I. Primary Reclamation Activities: $ 55,792

Slope grading and stabilization; removal and spreading of material piles; filling of the settling ponds; grading for erosion control.

($197/hr x 276 hrs[4].) = $54,372
Grade surveying and materials = $ 920[5]
Mob/Demob D-9 Dozer = $500[6]

II. Revegetation Activities[7]: $ 405,272

Cover 20 acres with 1 foot of soil:
Purchase 32,260 yd^3 x $10/$yd^3$ delivered:
(1,613 yd^3/ac. x 20 ac. x $10/$yd^3$) = $ 322,600

Spread 32,260 yd^3 soil:
(32,260 yd^3 / 249 yd^3/hr x $175/hr) = $22,672

Applicable dozing rate (D9 Caterpillar, standard blade)[8]:

[A] [B] [C] [D] [E] [F]
(500 yd^3/hr)(0.75)(0.80)(0.83)(1) = 249 yd^3/hr. uncompacted

A = Initial push rate

[4] Operator supplied value
[5] Operator supplied value
[6] Operator supplied value
[7] Reclamation Plan omits Revegetation Section. A minimum cost for revegetation is included in this cost calculation.
[8] Caterpillar Performance Handbook

B = Operator efficiency
C = Material density and cohesiveness
D = Job efficiency
E = Slope
F = Adjusted push rate for uncompacted final grade

Hydroseed with prescribed seed mix:
($3,000/ac. x 20 ac.) = $60,000

III. Plant Structures and Equipment Removal: $ 8,000

Removal and storage of mobile equipment, and removal of scattered junk[9].

IV. Monitoring and Miscellaneous Costs: $ 20,000

SMARA inspections (3 yrs. x $2,000 each) = $6,000
Revegetation replacement (20% of Planting Costs) = $12,000
County grading/hauling permits = $2,000

V. Summary of Direct Reclamation Costs: $ 489,064

VI. Summary of Indirect Reclamation Costs: $ 146,718

Supervision (5%; chart) = $24,453
Profit & Overhead (10.%, chart) =$48,906
Contingencies (10%, operator) = $48,906
Mobilization (5%, operator) = $24,453

VII. Total of Direct and Indirect Costs: $ 635,782

VIII. Lead Agency Administrative Costs: $ 95,367
(15% of Direct and Indirect Costs)

IX. Total Estimated Cost of Reclamation: $ 731,149

CALCULATION (II) – [No revegetation program; No tailings coverage]: The financial assurance amount as calculated is $107,140. This cost estimate is based on stabilizing the site, eliminating residual hazards, and preparing the site for an alternate use from its current condition; a revegetation program is omitted.

[9] Operator supplied value

I. Primary Reclamation Activities: $ 55,792

Slope grading and stabilization; removal and spreading of material piles; removal and grading of training wall; filling of the pond; grading for erosion control.

($197/hr x 276 hrs[10].) = $54,372
Grade surveying & materials = $ 920[11]
Mob/Demob D-9 Dozer = $500[12]

II. Revegetation Activities $ 0

No revegetation activities included.

III. Plant Structures and Equipment Removal: $ 8,000[13]

Removal and storage of mobile equipment, and removal of scattered junk.

IV. Monitoring and Miscellaneous Costs: $ 6,000

SMARA inspections (2yrs. x $2,000 each) = $4,000
County grading/hauling permits = $2,000

V. Summary of Direct Reclamation Costs: $ 69,792

VI. Summary of Indirect Reclamation Costs: $ 23,374

Supervision (6. 0%; chart) = $4,182
Profit & Overhead (12.5%, chart) =$8,724
Contingencies (10%, operator) = $6,979
Mobilization (5%, operator) = $3,489

VII. Total of Direct and Indirect Costs: $ 93,166

VIII. Lead Agency Administrative Costs: $ 13,974
(15% of Direct and Indirect Costs)

[10] Operator supplied value
[11] Operator supplied value
[12] Operator supplied value
[13] Operator supplied value

IX. Total Estimated Cost of Reclamation: $107,140

CALCULATION (III) – [No revegetation program; cover area with tailings]: The financial assurance amount calculated is $123,631. This cost estimate is based on stabilizing the site, eliminating residual hazards, and preparing the site for an alternate use from its current condition; included are activities for covering the affected lands with 6-inches of mine tailings.

I. Primary Reclamation Activities: $ 67,695

Slope grading and stabilization; removal and spreading of material piles; filling of the settling ponds; grading for erosion control.

($197/hr x 276 hrs[14].) = $54,372
Grade surveying and materials = $ 920[15]
Mob/Demob D-9 Dozer = $500[16]

Cover 21 acres with mine tailings 6 inches deep:
Assumes volume of mine tailings are on site and available.
(1,613 yd^3/ac)/2. x (21 ac.) = 16,936 yd^3

Spread 16,936 yd^3 tailings:
(16,936 yd^3 / 249 yd^3/hr x $175/hr) = $11,903

Applicable dozing rate (D9 Caterpillar, standard blade)[17]:

[A] [B] [C] [D] [E] [F]
(500 yd^3/hr)(0.75)(0.80)(0.83)(1) = 249 yd^3/hr. uncompacted
A = Initial push rate
B = Operator efficiency
C = Material density and cohesiveness
D = Job efficiency
E = Slope
F = Adjusted push rate for uncompacted final grade

II. Revegetation Activities: $ 0

[14] Operator supplied value
[15] Operator supplied value
[16] Operator supplied value
[17] Caterpillar Performance Handbook

No revegetation activities included.

III. Plant Structures and Equipment Removal: $ 5,811[18]

Removal and storage of mobile equipment, and removal of scattered junk.

IV. Monitoring and Miscellaneous Costs: $ 8,000

SMARA inspections (3 yrs. x $2,000 each) = $6,000
County grading/hauling permits = $2,000

V. Summary of Direct Reclamation Costs: $ 81,506

VI. Summary of Indirect Reclamation Costs: $ 26,000

Supervision (4.6%; chart) = $3,750
Profit & Overhead (12.3%, chart) =$10,025
Contingencies (10%, operator) = $8,150
Mobilization (5%, operator) = $4,075

VII. Total of Direct and Indirect Costs: $ 107,506

VIII. Lead Agency Administrative Costs: $ 16,125
(15% of Direct and Indirect Costs)

IX. Total Estimated Cost of Reclamation: $ 123,631

CALCULATION (IV) – [Cover area with tailings; hydroseed]: The financial assurance amount calculated is $233,952. This cost estimate is based on stabilizing the site, eliminating residual hazards, and preparing the site for an alternate use from its current condition; included are activities for covering the affected lands with 6-inches of mine tailings and hydroseeding for erosion control.

I. Primary Reclamation Activities: $ 67,695

Slope grading and stabilization; removal and spreading of material piles; filling of the settling ponds; removal of equipment and debris; grading for erosion control.

[18] Operator supplied value

($197/hr x 276 hrs[19].) = $54,372
Grade surveying and materials = $ 920[20]
Mob/Demob D-9 Dozer = $500[21]

Cover 21 acres with mine tailings 6 inches deep:
Assumes volume of mine tailings are on site and available.
(1,613 yd^3/ac)/2. x (21 ac.) = 16,936 yd^3

Spread 16,936 yd^3 tailings:
(16,936 yd^3 / 249 yd^3/hr x $175/hr) = $11,903

Applicable dozing rate (D9 Caterpillar, standard blade)[22]:

[A] [B] [C] [D] [E] [F]
(500 yd^3/hr)(0.75)(0.80)(0.83)(1) = 249 yd^3/hr. uncompacted
A = Initial push rate
B = Operator efficiency
C = Material density and cohesiveness
D = Job efficiency
E = Slope
F = Adjusted push rate for uncompacted final grade

II. Revegetation Activities: $ 63,000

Hydroseed 21 acres at $3,000 per acre = $63,000

III. Plant Structures and Equipment Removal: $ 5,811[23]

Removal and storage of mobile equipment, and removal of scattered junk.

IV. Monitoring and Miscellaneous Costs: $ 20,600

SMARA inspections (3 yrs. x $2,000 each) = $6,000
Revegetation replacement (20% of Planting Costs) = $12,600
County grading/hauling permits = $2,000

[19] Operator supplied value
[20] Operator supplied value
[21] Operator supplied value
[22] Caterpillar Performance Handbook
[23] Operator supplied value

V. Summary of Direct Reclamation Costs: $ 157,106

VI. Summary of Indirect Reclamation Costs: $ 46,331

Supervision (4.8%; chart) = $ 7,541
Profit & Overhead (9.7%, chart) =$ 15,239
Contingencies (10%, operator) = $ 15,701
Mobilization (5%[24], operator) = $ 7,850

VII. Total of Direct and Indirect Costs: $ 203,437

VIII. Lead Agency Administrative Costs: $ 30,515
(15% of Direct and Indirect Costs)

IX. Total Estimated Cost of Reclamation: $ 233,952

EXECUTIVE OFFICER'S RECOMMENDATION: The Executive Officer recommends that the SMGB approve a financial assurance amount of $233,952 for the Garcia Sand and Gravel mine site. The calculation of this amount is demonstrated in this Report.

This recommendation includes a revegetation program. Revegetation activity is included because the operator has not proposed any other revegetation program for consideration and analysis, and the Executive Officer believes that some type of revegetation element is necessary for compliance with 14CCR §3702 and Article 9 if the site is abandoned prior to completion of the proposed mining scenario. Revegetation is a necessary step in returning the affected lands to a condition suitable for the alternate recreational use approved in the reclamation plan. The proposed revegetation plan requires the least monitoring and greatest flexibility.

The basis for this recommendation is that the "Long Bar" feature is, to a great extent, a man-made feature whose construction was sanctioned by the California Debris Commission in the early 1900's (reference Section 2.2, History, in Reclamation Plan). According to the operator, the entire Long Bar feature was actively managed (constructed, shaped, dredged, and maintained) between the early 1900's and 1965 by the California Debris Commission. Mining on the site has been conducted since the 1950's (Reclamation Plan, Section 4). Therefore, although it may be true that no historical vegetation has been reported on the feature, it also is true that no vegetation has been allowed to take root because of the constant disturbance of the surface by mining and construction activities. The Long Bar feature is not naturally devoid of vegetation, but rather vegetation has not been allowed to develop.

[24] Operator supplied value

SUGGESTED MOTION LANGUAGE:

To approve the financial assurance amount:

*Mr. Chairman, in light of the information before the SMGB today, I move that the SMGB approve a financial assurance for the Garcia Sand and Gravel Mine Site in the amount of $**[SMGB to determine amount]**. The operator, Garcia Sand and Gravel, shall provide to the SMGB office a financial assurance instrument in the amount of $**[SMGB to determine amount]** in a form acceptable to the SMGB within 30 days of receipt of written notice of this action.*

ADDITIONAL COMMENTS ON DOCUMENTS SUBMITTED BY THE OPERATOR ON NOVEMBER 20, 2003:

Narrative Letter dated November 20, 2003 – (Narrative) This letter describes the following Exhibits and provides background information.

These comments respond to statements contained in the Narrative Letter:

1. The Operator's Financial Assurances Comply with SMARA (Pg. 5):

The operator argues that PRC §2773.1(a) provides for financial assurances to ensure that reclamation is completed according to the approved reclamation plan; since revegetation is not included in the approved reclamation plan, it cannot be considered in the financial assurance calculations. This issue is discussed above in this Report under Further Discussions. Indeed, under this line of reasoning, the financial assurance would need to cover the costs of completing mining to get the site to its intended, and approved, final design configuration readily adaptable to an approved alternate use. As discussed at some length earlier, this may not be a practical approach in many situations (see Option 1, above).

In like manner, the operator argues that revegetation should be a part of the approved reclamation plan only to the extent that revegetation will be consistent with the planned or actual subsequent use or uses of the mining site (per PRC §2773). Again, there is no argument with SMARA's position on the extent to which any reclamation activity need be applied to a mine site when discussing the approved end use of the site; however, the issue before the SMGB is how a site is to be reclaimed to a safe and stable condition when the approved reclamation plan is not practically achievable and the land is left in a disturbed condition.

PRC §2773 also provides that::

> "*(a) The reclamation plan shall be applicable to a specific piece of property or properties, shall be based upon the character of the surrounding area and such characteristics of the property as type of overburden, soil stability, topography, geology, climate, stream characteristics, and principal mineral commodities, and shall establish site-specific criteria for evaluating compliance with the approved reclamation plan, including topography, revegetation and sediment, and erosion control."*

If a mine site's operations are terminated prior to achieving the approved design configuration, the requirements contained in the approved reclamation plan do not and cannot wholly apply. Nevertheless, reclamation of the uncompleted site must meet the above general requirements of PRC §2773. Thus, 14CCR §3702 clarifies that:

> "*Lead agencies shall require financial assurances for reclamation in accordance with Public Resources Code section 2773.1 to ensure that reclamation is performed in accordance with the approved reclamation plan and with this article"* [Article 9] (emphasis added).

Article 9 of the California Code of Regulations (CCR) are the Reclamation Standards for SMARA. Specifically, 14CCR §3700 provides the key to the application of reclamation standards:

> *"Applicability. Reclamation of mined lands shall be implemented in conformance with the standards in this Article.*
> *(a) The standards shall apply to each surface mining operation to the extent that:*
> *(1) they are consistent with required mitigation identified in conformance with the California Environmental Quality Act, provided that such mitigation is at least as stringent as the standards; and,*
> *(2) they are consistent with the planned or actual subsequent use or uses of the mining site* (emphasis added).

Therefore, if a mine site cannot be reclaimed in accordance with the approved reclamation plan to meet the planned, approved end use because of early termination of the operations, then it must be reclaimed in accordance with the standards in Article 9 to meet the actual subsequent use.

2. RP #00-01 Is A Valid Reclamation Plan and Complies With SMARA:

The issue before the SMGB is not the validity of the operator's reclamation plan. The issue before the SMGB is the calculation of a financial assurance amount adequate to reclaim the mine site to a safe and stable condition from its current configuration.

On Page 10 of the Narrative Letter, a Table is used to present reclamation plan content issues. The majority of the issues raised by the operator deal with the specifics of statements by OMR that the current reclamation plan does not contain enough reclamation detail, and should be clarified and augmented with maps and illustrations.

In specific, but brief response:

Cell Pair 1 – End Use: The end use of the site is given in the Reclamation Plan under Section 24 as: *"Possible land uses of the leveled tailing and river bar areas after mining include: RECREATION:....."*. The Reclamation Plan describes the historical recreation activity as boat launching and limited fishing by the land owner. The Plan does not state that the site will be reclaimed as a site readily adaptable for recreational boat launching and fishing, or how that will be achieved.

Cell Pair 2 – Consistency with respect to SMARA: and;
Cell Pair 4 – Maps and Illustrations: The Reclamation Plan does not contain usable maps and illustrations. Specifically, the 7.5 Minute U. S. G. S. quadrangle (Exhibit No. 2) showing the location of the mine site has "No Scale", and is reduced in size to the degree that it is not readable. Exhibit 3, an aerial photograph of the site, contains the caveat: "Property boundaries marked on this aerial photograph are approximate locations and may not be to scale." If the mine site is within the 100-year flood plain, then cross-sections are required; if not within the 100-year flood plain, then cross-sections may not be required – however, if the site is not within the 100-year flood plain, then the operator's argument that revegetation materials would be washed away during flood events has no basis.

Cell Pair 3 – Cross-Sections: The reason that no cross sections are provided in the plan is that sections would only be required if the operations were within the 100-year flood plain. Under Operator Response, the operator notes that no cross sections are required as, "Mining will not occur within the 100-year flood plain as indicated in RP #00-01". However, in Section 22 of the approved Reclamation

Plan, Potential Uses of the Proposed Mining Site Before and After Reclamation, the plan states:

> *"...[C]urrent and past use of the property has been for mining and accessing the Yuba River for fishing and general recreation. No other potential uses of the property are envisioned due to its location and prohibition against construction in the 100 year flood plain. During flood events, the majority of the river bar areas are submerged, and the surface contours are changed...."*

Cell Pair 5 (pg. 11) – Depth of Excavations: The depth of excavation is provided in the Reclamation Plan in Section 4.1.1.2. According to the Plan, depending on the location within the mine site boundaries, the depth of excavation will vary from "80 feet below the water table" to ranging between "2 to 20 feet from the surface of the river bars." Excavation depths must be given in elevations relative to an accepted constant, measured datum, for instance, Mean Sea Level. Excavating 80 feet below the water table is not acceptable when the elevation of the water table is not provided, nor is the water table at a constant level. Excavations that range between 2 to 20 feet from the surface of the river bars is equally unacceptable, since the operator states that the river bars are constantly changing (Section 22 of Reclamation Plan).

Cell Pair 6 – Erosion Control Measures; and Cell Pair 7 (pg. 11) – Revegetation; have been discussed earlier in the Report.

Cell Pair 8 – End Date for Mining: The operator states that the end date for mining is stated in Section 4.0 and Exhibit 5 of the Reclamation Plan. The Reclamation Plan (Section 4.1.1.2) gives the mining life as: "Although the initial mining on the river bar area will take approximately three (3) years, subject to recharge, mining may continue for as long as forty (40) years."

PRC §2772(c) provides: *"The reclamation plan shall include all of the following information and documents: (3) The proposed dates for the initiation and termination of the surface mining operation."*

The operator's reclamation plan does not contain proposed dates for the initiation or the termination of mining operations. The reclamation plan states a possible interval of time, which is dependent on such unpredictable factors as market demand and the climate. The plan does not meet SMARA's requirement.

3. Operators' Mine Inspection Reports Are Inaccurate And Erroneous, And All Corrective Measures And Alleged Violations Must Be Stricken From The Report: The SMGB staff

disagrees with the operators' statement. The inspection reports are accurate, and a request for additional documentation and text to clarify the existing plan, which is devoid of details regarding its current and propose design configuration, is not unreasonable. Regardless of Yuba County's approval of the current plan, the plan does not contain the documentation required by SMARA.

First Exhibit A and First Exhibit B – These documents relate to the approval process for the reclamation plan by Yuba County. The issue before the SMGB is not whether the reclamation plan has been duly approved, nor is it with the contents of the plan. The issue before the SMGB is the calculation of an adequate financial assurance amount for the lands currently disturbed by the mining operation.

First Exhibit C – This is a copy of the approved reclamation plan.

First Exhibit D – This document is a Settlement Agreement between the operator, Yuba County, William Calvert (Calvert) and the Yuba Goldfields Access Coalition (Coalition). This Agreement was the result of a lawsuit brought by Calvert and the Coalition over the validity of the reclamation plan and its approval. Neither the SMGB nor the Department of Conservation (DOC) are parties to the Settlement Agreement. The agreement is not binding on the SMGB or the DOC.

On Page 4, ¶ 1, of the Narrative Letter it is stated that the Coalition appealed the Plan to the SMGB on December 5, 2001, and the SMGB rejected the Coalition's appeal because the Coalition did not have standing. On January 22, 2002, the Coalition's appeal petition to the SMGB was rejected because the Coalition appealed under a section of SMARA that did not apply (PRC §2770[e]). The Coalition's "standing" to petition the SMGB was not an issue.

Second Exhibit A – Copy of Deed to property. The ownership of the property is not an issued before the SMGB.

Second Exhibit B – Written description of the property boundaries. The property boundaries are not an issue before the SMGB. However, it may be noted that the reclamation plan does not contain a usable plan map of the site showing the property boundaries.

Exhibit E – Copy of documents showing dismissal with prejudice of the lawsuit Calvert et al. vs. Yuba County et al.; SMGB and DOC are not a part of the Settlement Agreement. The Settlement Agreement and its contents are not an issue before the SMGB.

Exhibit F – Revised financial assurance cost estimates submitted (via e-mail) to the SMGB on November 11, 2003, for Stringer Pit mine site and Garcia Sand and Gravel mine site. These submittals were in response to a SMGB letter dated October 16, 2003, stating that

the "one line" calculation by the operator received by the SMGB office on October 15, 2003, was not an adequate response.

Exhibit G – E-mail correspondence between the operator's legal representative (dated November 11th, 17th, and 18th) and the SMGB office. An additional response from the SMGB office to the operator's legal representative dated November 14th is not included, but is attached to this Report for completeness.